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CERTIFIED FOR PARTIAL PUBLICATION*

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Plumas)

In re JACOB J., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. JACOB J., Defendant and Appellant.	C046367 (Super. Ct. No. 5440)

APPEAL from a judgment of the Superior Court of Plumas County, Ira R. Kaufman, Judge. Reversed with directions.

John Hargreaves, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Senior Assistant Attorney General, and John G. McLean, Deputy Attorney General, for Plaintiff and Respondent.

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* Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of parts I, II, and IV of the Discussion.

Seventeen-year-old Jacob J. (the minor) was committed to the California Youth Authority (CYA) for a period not to exceed four years after he admitted possessing cocaine. (Health & Saf. Code, § 11350, subd. (a).) He appeals.

We reject the minor's arguments that the court abused its discretion in committing him to CYA and in denying his motion to modify that commitment.

We hold, however, that the amendments to Welfare and Institutions Code section 731 (further undesignated statutory references are to the Welfare and Institutions Code) requires the trial court to set a maximum term of physical confinement at CYA based on the particular facts and circumstances of the matter or matters that conferred jurisdiction over the minor in juvenile court. Because the record does not demonstrate that the trial court set a maximum term of confinement based on the facts and circumstances of this particular case, we remand the matter to the juvenile court for that determination. We also note the trial court failed to complete Judicial Council form JV-732 and direct the court to do so at the further disposition hearing.

FACTS AND PROCEEDINGS

In February 2002, the minor was declared a ward of the court and placed on probation after he admitted two counts of misdemeanor receiving stolen property. (Pen. Code, § 496, subd. (a).) The offenses occurred in January 2002 when he was found in possession of a Sony Playstation, Playstation games, an X-

Box, and additional items that had been reported missing from two separate residences. He was ordered to serve 90 days in juvenile hall and thereafter, was released to his mother's home pursuant to electronic monitoring, probation department supervision, and assessment by the Drug and Alcohol Program.

In May 2002, the minor admitted he had violated probation when he repeatedly disrupted his class at school, used profanity, and intimidated and harassed students and faculty. He was continued on probation.

In September 2002, the minor admitted charges of misdemeanor resisting or obstructing a police officer (Pen. Code, § 148, subd. (a)(1)) and possession of marijuana (Health & Saf. Code, § 11357, subd. (b)), charges brought when he fled from officers attempting to take him into custody for a probation violation. At the time of his arrest, he was found to have in his possession two marijuana cigars. In exchange for the minor's admissions, the court dismissed allegations that he failed to attend a drug court meeting and tested positive for tetrahydrocannabinol (THC). He was continued on probation, released to his mother's custody, and required to continue attending drug court.

In October 2002, the probation department alleged the minor had again violated probation by testing positive for THC in September and failing to follow the directives of school officials. The court ordered him detained in juvenile hall, later releasing him on his own recognizance.

In April 2003, the minor admitted violating his probation when he failed to return home on November 10, 2002, and failed to keep the probation department aware of his whereabouts for five months until he was arrested in Alameda County. During that time, he was not enrolled in school, was drinking alcohol two times per week, and smoking marijuana at least once a day. He repeatedly failed to appear in court for his drug court progress report and had an outstanding warrant for his arrest. The day before he was apprehended, the minor had been panhandling at an Oakland gas station and, when asked to leave by the property owner, slashed the tire of the property owner's vehicle. The police were contacted the next day when the minor returned to the gas station to panhandle. As a result of the probation violation, the court ordered the minor detained in juvenile hall.

In October 2003, the minor admitted a charge of possessing cocaine (Health & Saf. Code, § 11350, subd. (a)), which occurred that month when the police stopped him for running a red light and found cocaine underneath the driver's seat. He was ordered placed temporarily at CYA for a 90-day diagnostic study. (Welf. & Inst. Code, § 1731.6.)

While awaiting placement at CYA, in December 2003, the minor admitted a charge of misdemeanor battery (Pen. Code, § 242) that arose from a fight in juvenile hall during which the minor repeatedly struck another inmate in the face.

At the dispositional hearing on February 2, 2004, the court committed the minor to CYA for a period not to exceed six years,

calculated as follows: three years for possession of cocaine (Pen. Code, § 11350, subd. (a)), two additional years for two counts of misdemeanor possession of stolen property (Pen. Code, § 496, subd. (a)), and one additional year for resisting or obstructing an officer (Pen. Code, § 148, subd. (a)). The court explained that it committed the minor to CYA because he had a substance abuse problem, which required "a bit more than a 12-step program," because juvenile hall lacked services, because the minor would run away if placed in a non-secure setting, and because his incarceration would protect society.

On March 15, 2004, the court denied the minor's motion to modify the CYA commitment that had been based on documentation submitted by minor's counsel detailing recent developments regarding treatment of minors at CYA. At the same hearing, the court reduced the minor's maximum term of physical confinement to four years, in response to a letter sent by CYA indicating that the consecutive term for the misdemeanors was four months instead of one year each.

DISCUSSION

I

Abuse of Discretion in Committing the Minor to CYA Based on Failure to Consider Less Restrictive Alternatives

To justify a commitment to CYA, there must be evidence in the record demonstrating probable benefit to the minor and evidence supporting a determination that less restrictive alternatives are ineffective or inappropriate. (*In re Teofilio*

A. (1989) 210 Cal.App.3d 571, 576.) A reviewing court's commitment order will be upheld absent a showing that the court abused its discretion in making the commitment. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) The minor argues that the court abused its discretion in committing him to CYA because "placement with [the minor's] aunt and uncle appears to have been overlooked by the juvenile court." The record does not support his argument.

When the minor was initially declared a ward of the juvenile court in February 2002, the probation department recommended that he be placed in the home of his aunt and uncle due to his mother's inability to control his behavior. The court ordered a study of the aunt and uncle's home. The report of the home study prepared by the probation department stated that the aunt and uncle would be suitable guardians for the minor but noted that the minor's mother wanted the opportunity "to parent" the minor in her home with the assistance of the court and probation department. The probation department then changed its recommendation to placement with the mother, which the court followed.

Eight months later, after the minor fled from police and was found in possession of marijuana, the probation department recommended that he be placed in a one-year boot camp. The court, however, again placed the minor with his mother.

After the minor absconded from probation's supervision for six months and admitted violating his probation, the report from the probation department filed in May 2003 noted that the minor

was “out of control,” and was a “significant flight risk and threat to any community in which he resides.” The court ordered the minor detained at juvenile hall and the probation department to prepare a progress report.

The progress report filed two months after the probation department’s last report recommended that the minor be placed with his aunt and uncle. While the minor had stated on several occasions that he did not want to live with them, the probation officer stated his hope that the “Minor will have a change of heart,” or else he would “ha[ve] no choice but to recommend California Youth Authority at this time.” The uncle had earlier indicated that he and his wife were willing to accept the minor on one condition: the minor must want to live with them. Another placement review hearing report filed approximately three months later again recommended placement with the aunt and uncle.

Instead, in August 2003, the court placed the minor with his adult cousin in Shasta County under the supervision of that county’s probation department.

Following the minor’s admission to possessing cocaine in October 2003, the dispositional report recommended that the minor be committed to CYA because he was an unsuitable candidate for either a group home or boot camp due to his defiant attitude and risk of flight. Further, he could not be placed with any appropriate relatives because his propensity to engage in criminal activity had increased.

The diagnostic evaluation report filed by CYA similarly recommended that the minor be committed to CYA. He was likely to run away if placed in an nonsecure setting. The report noted that the minor had lived with his aunt and uncle for approximately two years, that they loved him very much and treated him like one of their own children, but had problems with him when he refused to attend school.

At the dispositional hearing on February 2, 2004, the court stated it had read and considered the disposition report and the report from CYA. It specifically rejected minor's counsel's argument that the minor be placed at juvenile hall for four months until the minor turned 18 years old, at which time the court could terminate his probation. Among the reasons the court concluded CYA was the proper placement were lack of services at juvenile hall, the security of a CYA placement, and safety of the public.

The trial court's explanation of its selection of CYA indicates a deliberate and thorough exercise of its discretion. The juvenile court was clearly familiar with placement options other than CYA, given the extensive discussion of the issue in numerous reports filed by the probation department, many of which mentioned the aunt and uncle, and the diagnostic evaluation by CYA that similarly mentioned them. However, as noted in the dispositional report filed by the probation department, the minor could not be placed with any appropriate relatives because his propensity toward criminal activity had increased. Moreover, the court specifically rejected placements

other than CYA because the minor was a flight risk who needed services unavailable in juvenile hall. On this record, we cannot agree with the minor that the court overlooked placing him with his aunt and uncle. There was no abuse of discretion.

II

Substantial Evidence that a CYA Commitment Would Result in Probable Benefit to the Minor

The minor contends there was no substantial evidence that a CYA commitment would result in probable benefit to him and therefore, the court abused its discretion in committing him to CYA and denying his motion to modify the commitment. Specifically, he argues that the evidence submitted by counsel to the juvenile court regarding the current state of conditions at CYA showed that "the commitment will not carry out the rehabilitate objective contemplated by the Juvenile Court Law."

At the dispositional hearing on February 2, 2004, minor's counsel recounted the contents of an investigation that found CYA penal in nature and lacking in counseling services or assistance to the minors. The court stated it was "[v]ery well aware" of the investigation going on at CYA.

Approximately one month later, the minor moved for an order modifying his CYA commitment pursuant to section 779, attaching to his motion two exhibits regarding the current state of conditions at CYA. Exhibit A was a letter to the court from the Youth Law Center noting that other counties had stopped committing minors to CYA pending further investigation and

mentioning “expert reports” that “raised serious concerns about the level of violence, draconian conditions of confinement, and serious deficiencies in education, mental health and other treatment services at the California Youth Authority.” The exhibit referred to a website where the reports could be found. Exhibit B was a summary of portions of the website regarding the physical safety of wards. The modification motion recounted counsel’s concern about the minor’s welfare and safety at CYA and opined that the minor would be “severely at risk if subjected to the regimented treatment at CYA.”

On March 15, 2004, the court denied the motion, reiterating that CYA was the proper placement for the minor.

“A juvenile court’s commitment order may be reversed on appeal only upon a showing the court abused its discretion. [Citation.] ‘“We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them.”’” (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330.)

In selecting CYA, the court noted the minor’s substance abuse problem, stating he needed “a bit more than a 12-step program,” and found that juvenile hall lacked services. In denying the minor’s motion to modify that placement, the court again indicated that CYA was the proper placement for the minor. The minor’s history showed he had possessed marijuana and cocaine, failed to appear in court for drug court progress reports, and was alleged to have failed drug tests. Despite

supervised placement at the home of his mother and adult cousin and time served in juvenile hall, the minor had failed to reform. Although aware of the CYA controversy, the trial court obviously was of the opinion that a CYA commitment did not represent a threat to the minor's well-being, but that, in fact, there was a reasonable chance he could benefit from it. The juvenile court's finding of probable benefit is supported by substantial evidence and our examination reveals no abuse of discretion in the court's decision to commit the minor to CYA and to deny his motion to modify that commitment.

III

Court's Discretion to Impose Less than the Adult Maximum Term of Imprisonment For a Minor Committed to CYA

In a supplemental brief, the minor contends the court failed to exercise its recently-conferred discretion pursuant to section 731, subdivision (b) to set a maximum term of physical confinement less than the adult maximum term of imprisonment. The People contend the amendments to section 731 are simply a recognition of existing law under section 726, subdivision (c) that gives the court discretion to aggregate the period of physical confinement on multiple counts or multiple petitions, including previously sustained petitions adjudging the minor a ward of the court.

Our role in construing the amendments to section 731 is to "'ascertain the Legislature's intent so as to effectuate the purpose of the law.'" (*In re J.W.* (2002) 29 Cal.4th 200, 209.)

We begin with the words of the statute as they are generally the most reliable indicator of legislative intent. (*People v. Gardeley* (1996) 14 Cal.4th 605, 621.)

From 1979 to 2003, the second paragraph of section 731 read: "A minor committed to the Department of the Youth Authority may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court. Nothing in this section limits the power of the Youthful Offender Parole Board to retain the minor on parole status for the period permitted by Section 1769." (Stats. 1979, ch. 860, § 7, p. 2972; Stats. 1980, ch. 626, § 2, p. 1712.)

In 2003, the Legislature passed Senate Bill No. 459, which amended section 731. (Stats. 2003, ch. 4, § 1, eff. Apr. 8, 2003, operative Jan. 1, 2004.) The amendment rewrote the former second paragraph of section 731 as follows and designated it as subdivision (b): "A minor committed to the Department of the Youth Authority may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court. *A minor committed to the Department of the Youth Authority also may not be held in physical confinement for a period of time in excess of the maximum term of physical confinement set by the court based upon*

the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court, which may not exceed the maximum period of adult confinement as determined pursuant to this section. This section does not limit the power of the Youth Authority Board to retain the minor on parole status for the period permitted by Section 1769." (Italics added.)

The definition of "maximum term of imprisonment" applicable to section 731 remains unchanged and "means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled." (§ 726, subd. (c).)

In plain language, the amendments to section 731 require the court to set the maximum term of physical confinement based on the facts and circumstances of the matters or matters that brought or continued the minor under the jurisdiction of the juvenile court, so long as the term does not exceed the adult maximum period of imprisonment.

The People's position, that the language added to section 731 in subdivision (b) is simply a recognition that under section 726 the juvenile court has discretion to aggregate the period of physical confinement on multiple counts or multiple petitions, is unavailing. "When the Legislature amends a

statute, we will not presume lightly that it 'engaged in an idle act.'" (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 935, quoting *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 634.) Thus, we reject the People's assertion that despite having substantially reworked the language of section 731 the Legislature intended no change in the law. (See *Elsner v. Uveges*, *supra*, at p. 935.)

The People add that the construction of section 731, subdivision (b) urged by the minor conflicts with the requirement in section 726, subdivision (c) that the court shall specify that the minor "may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court" (§ 731, subd. (b)), and the definition in section 726, subdivision (c) of "maximum term of imprisonment" as the longest term of imprisonment prescribed by law.

On the contrary, the plain language of section 731, subdivision (b) adheres to the definition of the "maximum term of imprisonment" in section 726, subdivision (c) because it mandates that "[a] minor committed to the Department of the Youth Authority may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court. . . ." (§ 731, subd. (b).)

Section 731, subdivision (b) requires the court to establish a term of physical confinement, not to exceed the adult maximum period of imprisonment, "based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court . . . ."

Even if the plain meaning of the words of the statute was not enough, the legislative history of Senate Bill No. 459 requires the same conclusion. (See *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 736 [court "may observe that available legislative history buttresses a plain language construction"].) On our own motion, we take judicial notice of the legislative history of Senate Bill No. 459. (Evid. Code, § 452, subd. (c); *Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 400, fn. 8 [appellate court may take judicial notice of legislative history materials on own motion].) "To determine the purpose of legislation, a court may consult contemporary legislative committee analyses of that legislation, which are subject to judicial notice." (*In re J.W.*, *supra*, 29 Cal.4th at p. 211.) The original committee bill analysis explained, "This bill would authorize the court to additionally set maximum terms of physical confinement in the CYA based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court. This new provision would provide for court consideration of factors about the offense and the offender's history which would be comparable to those employed now for the triad sentencing of adults, and have those considerations

reflected in the CYA confinement time ordered by the court." (Sen. Com. on Public Safety, Rep. on Sen. Bill No. 459 (2003-2004 Reg. Sess.) Mar. 13, 2003, p. I.) The use of the word "additionally" and the phrase "new provision would provide for" belie the People's assertion that the amendments were simply clarification of existing law.

Our reading of section 731, subdivision (b) is further supported by a later committee report that explains that the bill "[a]uthorizes the court to set a maximum term of confinement that is not necessarily the adult term maximum." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 459 (2003-2004 Reg. Sess.) as amended Mar. 17, 2003, p. 3.)

Finally, the arguments in support of the bill that were included in the state Senate's bill analysis add additional weight to our plain reading of section 731, subdivision (b). (Sen. Rules Com., Off. of Sen. Floor Analysis, Rep. on Sen. Bill No. 459 (2003-2004 Reg. Sess.) as amended Apr. 3, 2003, p. 9.) Supporters of the bill recount that ". . . by realigning this authority, the system will achieve greater local control, enhance accountability at CYA and provide better outcomes for youth resulting in improved public safety." They further explain that "they support the proposal to involve county juvenile justice systems in determining the treatment programs and length of stay of the young people they commit to CYA," because "[t]he juvenile court judges and probation officers know the wards and understand what rehabilitation efforts are needed

before the young offenders can return to their communities." (*Ibid.*)

The foregoing legislative history of Senate Bill No. 459 leaves no doubt in our mind that the amendments to section 731 were intended to give the juvenile court discretion to impose less than the adult maximum term of imprisonment when committing a minor to CYA and to require the court to set that term of confinement based on the facts and circumstances of each case. (§ 731, subd. (b).) Our holding expresses no opinion on the applicability of these amendments to the calculation of confinement times for minors placed outside CYA.

The minor contends the trial court failed to comply with section 731, subdivision (b). He argues the trial court failed to exercise the discretion granted by the new statute.

On a silent record, the "trial court is presumed to have been aware of and followed the applicable law" when exercising its discretion. (*People v. Mosley* (1997) 53 Cal.App.4th 489, 496; accord, Evid. Code, § 664.) The appellate court cannot presume error where the record does not establish on its face that the trial court misunderstood the scope of its discretion. (*People v. White Eagle* (1996) 48 Cal.App.4th 1511, 1521-1523; *People v. Davis* (1996) 50 Cal.App.4th 168, 170-173.)

But we think the matter goes somewhat beyond the question of whether the juvenile court was aware of and exercised the discretion granted by the statute. Given the wording of the statute and its legislative history, where, as here, the juvenile court sets the maximum term of physical confinement at

CYA at the maximum term of an adult confinement, the record must show the court did so after considering the particular facts and circumstances of the matter before it. We reach this conclusion considering not only the wording of the amendment to the statute, which we have discussed, but also the structure of the statute after its amendment. Before the statute was amended, it said the maximum term of physical confinement at CYA could not exceed the maximum period of imprisonment that could be imposed on an adult convicted of the same offenses. After its amendment, the statute spoke of a second and separate, although perhaps not different, period of physical confinement, that is, confinement set by the court given the particular facts and circumstances of the case under consideration. When the court has stated only the maximum term of confinement that could have been imposed on an adult and is silent as to a maximum term based on the facts of the case, it has not spoken to the second, separate maximum called for by the amended statute.

Thus, while the statute does not require a recitation of the facts and circumstances upon which the trial court depends, or a discussion of their relative weight, the record must reflect the court has considered those facts and circumstances in setting *its* maximum term of physical confinement even though that term may turn out to be the same as would have been imposed on an adult for the same offenses. The juvenile court having failed to set that term, the matter must be remanded to the court for that determination.

IV

Judicial Council Form JV-732

The minor contends the court was required to fill out Judicial Council form JV-732 when it committed the minor to CYA, even though the court filled out the form when it sent the minor to CYA for a diagnostic evaluation less than two months earlier. We disagree with the minor's argument that the court is required to fill the form out twice but remand the matter because the court did not complete the portion of the form regarding the minor's "[e]xceptional needs."

On November 19, 2003, the court ordered the minor sent to CYA for a 90-day diagnostic evaluation to determine whether or not he would benefit from placement at CYA. On December 5, 2003, the court filled out Judicial Council form JV-732, but left blank section 11 of the form regarding the minor's "[e]xceptional needs." The record does not contain any other Judicial Council JV-732 forms.

Rule 1494.5(a) of the California Rules of Court provides that when a juvenile court commits a minor to CYA, "[t]he court must complete Judicial Council form JV-732, *Commitment to the California Youth Authority*." That form provides boxes to be checked indicating whether or not the minor has "[e]xceptional needs." In this case, the juvenile court identified the minor as having special educational needs.

Had the form been filled out completely at the time the minor was sent to CYA for a diagnostic evaluation, we would find

that the court had complied with California Rules of Court, rule 1494.5(a). The rule does not require that an additional Judicial Council form JV-732 be sent to CYA when one has already been sent. However, because in this case the court failed to complete the "[e]xceptional needs" section of Judicial Council JV-732 form, we remand the matter for the court to fill out the form in its entirety.

DISPOSITION

The judgment (order committing the minor to CYA) is reversed. The matter is remanded to the juvenile court with directions to set a maximum term of physical confinement based upon the facts and circumstances of the case and to complete Judicial Council form JV-732 in its entirety and forward a copy of the completed form to CYA.

HULL, J.

We concur:

MORRISON, Acting P.J.

CANTIL-SAKAUYE, J.